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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,243	11/28/2003	Robert Model	MOD-001	1645

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EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/724,243

Applicant(s)

MODEL, ROBERT

Examiner

Timothy M. Ayres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 4,5 and 16-21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3,6-15 and 22-24 is/are allowed.
- 6) ☒ Claim(s) 25-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/03/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is a second and final action on the merits of application SN 10/724,243.

#### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the medicine cabinet and the components of the medicine cabinet (i.e. back wall and shelf) of claims 25-32 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 25, 29, and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The medicine cabinet, its shelves, and back wall were not described in the specification to a level to enable one to make this invention or to understand how the organizer is connected to the cabinet. The implied use of the organizer in the medicine cabinet by the title and the background is not sufficient to show and describe how the organizer is mounted to use with a medicine cabinet.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 25 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if "mountable in a medicine cabinet" is meant to be

as an intended use or as a positive recitation of the medicine cabinet as in claims 29 and 30.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25-28, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatcher in view of Roesler. Hatcher teaches a tilting organizer (Figs. 4-7) comprising: a single unit base section (18, 20, 22) and a single unit supply section (14) movably and rotatably attached to the base section via an arm (16) on the supply section and groove (28) in the sidewall of the base section. The supply section movable up and down and at various angles (see Fig. 7) and is mounted in the base section so that it can move out of the base section from two different directions (see Figs. 4/5 and Figs. 6/7). The groove can include a slopping section (see Figs. 6/7) if desired. For claim 25 and 27, Hatcher fails to teach compartments in the supply section. Roesler teaches the use of dividers/compartments in a supply section unit (see Fig. 3). It would have been obvious to modify the supply unit of Hatcher by adding a divider (with or without smaller dividers therein) in a front or side portion thereof, such as the divider(s) taught by Roesler, to provide a storage compartment for small articles, etc.

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7. Regarding claim 25 the recitation that the organizer is in a medicine cabinet in the preamble has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). The recitation of "mountable in a medicine cabinet" is given the limitation that the base section is capable of being mounted in a medicine cabinet since it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In *re Hutchison*, 69 USPQ 138. Hatcher's base section is seen to have the ability to mount into or onto any cabinet structure.

8. For claim 31, Hatcher in view of Roesler fails to teach a plastic organizer. However, plastic drawer assemblies are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the organizer of Hatcher in view of Roesler by making it out of plastic instead of metal, depending on the desired need of the person constructing the organizer, depending on the materials readily available, personnel preferences, economic considerations, etc. Hatcher's base unit and supply section are made as single components.

9. Regarding claim 32, the front edge of the supply section of Hatcher has a thumb tab (42) to enable a user to grab the supply section (14).

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10. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatcher in view of Roesler as applied to claim 25 above, and further in view of US Patent 6,382,746 to Rosas. Hatcher in view of Roesler discloses every element as claimed and discussed above except that the back wall of the base section is secured to the back wall of the medicine cabinet and that a floor of the base section is secured to a shelf of the medicine cabinet. Rosas '746 discloses a medicine cabinet assembly (10) with drawer (30,31) removably disposed in a cabinet (11). It would have been obvious for a person of ordinary skill in the art to take the organizer of Hatcher in view of Roesler and insert it into the space used by the drawers of the medicine cabinet of Rosas so that the user has more storage. It is obvious for the base section to be mounted to either the back wall or the shelf of the medicine cabinet by any means known in the art such as screws.

***Allowable Subject Matter***

11. Claims 1-3 and 6-15 are allowed. (Claim 1 teaches an organizer having a base including a bottom and a side with a groove and having an organizer with an arm that slides within the groove of the base. The allowable subject matter being the specific arm of the supply section of the organizer as claimed, i.e. the plural protrusions extending from an outer edge of the arm.)

12. Claims 22-24 are allowed. (Claim 22 teaches an organizer having a base including a bottom and a side with a groove and having an organizer with an arm that slides within the groove of the base. The allowable subject matter being the specific

tilting organizer base groove claimed, i.e. the groove extends vertically downward from an upper edge to a stationary point, the groove then extends horizontally forward from the stationary point and then extends diagonally up and forward, and the groove ending at a tilting point at the end of portion extending diagonally up and forward.)

### ***Response to Arguments***

Applicant's comments with regard to the allowability of claims 1-3 and 6-15 have been considered. They are now allowable for including the allowable subject matter of claim 16. Claims 25-32 however, are not in condition for allowance. Note the rejections above.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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11/14/05



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